

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO
2014 AUG 13 PM 3:42
CLERK-LAS CRUCES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUAN CARLOS HERNANDEZ,

Defendant.

CRIMINAL NO. 14CR 2790 VT

lan
8-13-14

PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11, the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, **JUAN CARLOS HERNANDEZ**, and the defendant's counsel, BROCK M.

BENJAMIN:

REPRESENTATION BY COUNSEL

1. The defendant understands the defendant's right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The defendant further understands the following rights:
- a. to be charged and prosecuted by indictment;
 - b. to plead not guilty;
 - c. to have a trial by jury;

- d. to confront and cross-examine witnesses and to call witnesses to testify for the defense; and
- e. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to the Information charging a violation of 18 U.S.C. § 2422(b): Coercion and Enticement of a Minor.

SENTENCING

4. The defendant understands that the minimum and maximum penalty the Court can impose is:

- a. imprisonment for a period of not less than ten (10) years and up to life;
- b. a fine not to exceed \$250,000;
- c. a mandatory term of supervised release of not less than five (5) years and up to life. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked--even on the last day of the term--and the defendant could then be returned to another period of incarceration and a new term of supervised release); and
- d. a mandatory special penalty assessment of \$100.00.
- e. restitution as may be ordered by the Court pursuant to 18 U.S.C. § 2259

5. The parties recognize that the Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. It is expressly understood and agreed by and between the defendant and the United States that:

- a. The United States and Defendant agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a sentence of 120 months is appropriate in this case. This agreement does not include a specific term

of supervised release or any restitution amount that may be ordered by the Court.

- b. The United States hereby expressly reserves the right to make known to the United States Probation Office and to the Court, for inclusion in the presentence report prepared pursuant to Federal Rule of Criminal Procedure 32, any information that the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under USSG § 1B1.3.
- c. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the defendant agrees that, upon the defendant's signing of this plea agreement, the facts that the defendant has admitted under this plea agreement as set forth below, as well as any facts to which the defendant admits in open court at the defendant's plea hearing, shall be admissible against the defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the defendant expressly waives the defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the defendant admits in conjunction with this plea agreement.
- d. So long as Defendant remains in prison custody, the United States will not oppose Defendant's release to state custody after the conclusion of this case to resolve his outstanding charges in the state of Texas.

DEFENDANT'S ADMISSION OF FACTS

7. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

Between on or about September 1, 2012, and June 22, 2013, I intentionally persuaded, induced, enticed, or coerced underage females online to engage in illegal sexual activity with me. I did this through my Facebook account JUANBGOOD, which I accessed either through my cellular phone or on a computer. I knew the girls were under the age of eighteen and I held myself out to be an eighteen year old male. One of the underage females that I was communicating with told me that she was thirteen years old. Despite this, I engaged in multiple sexually explicit conversations with her that involved carrying out various sexual acts including vaginal and anal intercourse, cunnilingus, and fellatio. I recognize that I could have been charged with a crime in either Texas (Tex. Pen. Code Ann. § 21.11(a)) or New Mexico (NMSA § 30-09-13(B)), if the acts had been carried out between myself and the minor. Most of my sexually explicit communications with these minors occurred while I was in Texas and they were in New Mexico.

8. By signing this agreement, the defendant admits that there is a factual basis for each element of the crime(s) to which the defendant will plead guilty. The defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

9. The United States and the defendant stipulate as follows:

- a. Pursuant to USSG § 3E1.1, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the defendant's criminal conduct. Consequently, the defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the defendant providing an appropriate oral or written statement to the United States Probation Officer who prepares the presentence report in this case in which the defendant clearly establishes an entitlement to this reduction.
- b. Provided the defendant meets the requirements of USSG § 3E1.1(b), the government agrees to move for a reduction of one (1) additional level from the base offense level as calculated under the sentencing guidelines.

10. The defendant fully understands that the agreement included in this document determines the sentence in this case, and whether the Court accepts the plea agreement described herein and enters that agreed upon sentence is solely in the discretion of the Court. Both parties understand that should the Court choose not to accept this plea agreement, as is fully laid out in this document, the Defendant may withdraw his guilty plea pursuant to Rule 11(d)(2)(A). If the Court rejects the plea agreement, the United States may also withdraw from this plea agreement and proceed to pursue an Indictment for the charge Defendant is pleading guilty to, as well as any additional charges as solely within the discretion of the United States.

DEFENDANT'S OBLIGATIONS

11. The defendant understands the defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information, including, but not limited to defendant's true identity, citizenship status, and any prior criminal convictions. The defendant hereby represents that the defendant has complied with and will continue to comply with this obligation. The defendant understands that any misrepresentation with respect to the above obligations may be considered a breach of this plea agreement.

12. The defendant acknowledges that he has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, he must register and keep the registration current in each of the following jurisdictions: where the defendant resides; where the defendant works; and where the defendant is a student. The defendant understands that the requirements for registration include providing his name, his residence address, and the names and addresses of any places where he is or will be an employee or a student, among other information. The defendant further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of his name, residence, employment, or student status. The defendant has been advised, and understands, that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both. The defendant agrees that, based on his conviction in this case, he will be correctly classified as a Tier II sex offender, subject to a twenty-five (25) year registration period under 42 U.S.C. §§ 16911, 16915. Regardless of his classification, however, the defendant hereby stipulates to and agrees to the twenty-five (25) year registration period that a Tier II sex offender would be subject to under 42 U.S.C. §§ 16911, 16915.

RESTITUTION

13. Pursuant to 18 U.S.C. § 2259, the defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. The defendant acknowledges that pursuant to 18 U.S.C. § 2259(a), the Court is required to order restitution for the full amount of the victims' compensable losses as defined at 18 U.S.C. § 2259(b)(3) and (c) as may be proved by the United States or stipulated to by the parties. The defendant acknowledges that the Court may not decline to award restitution because of the defendant's economic circumstances or the fact that the victims have, or are entitled to receive compensation for their injuries from the proceeds of insurance or any other source.

14. The defendant understands that an unanticipated amount of a restitution order will not serve as grounds to withdraw defendant's guilty plea. The defendant further agrees to comply with any restitution order entered into at the time of sentencing. The defendant further agrees that defendant will not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding. The defendant agrees to make full restitution for the provable losses caused by defendant's activities. The defendant further agrees to grant the United States a wage assignment, liquidate assets, or complete any other tasks which will result in immediate payment in full, or payment in the shortest time in which full payment can be reasonably made as required under 18 U.S.C. § 3572(d).

15. The defendant further agrees to make full and accurate disclosure of his financial affairs to the United States. Specifically, the defendant agrees that, before sentencing, the defendant shall provide to the United States, under penalty of perjury, a financial statement which shall identify all assets owned or held directly or indirectly by the defendant. The defendant shall also identify all assets valued at more than \$5,000 which have been transferred to

third parties since May 18, 2012, including the location of the assets and the identity of any third party.

16. The parties will jointly recommend that as a condition of probation or supervised release, the defendant will notify the Financial Litigation Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation after the execution of this agreement until the fine or restitution is paid in full. *See* 18 U.S.C. § 3664(k), (n).

17. The parties will also jointly recommend that as a condition of probation or supervised release, the defendant will notify the Financial Litigation Unit, United States Attorney's Office, before the defendant transfers any interest in property owned directly or indirectly by the defendant, including any interest held or owned under any other name or entity, including trusts, partnership and/or corporations. *See* 18 U.S.C. § 3664(k), (n).

18. The defendant further agrees that whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for in 18 U.S.C. § 3613. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

WAIVER OF APPEAL RIGHTS

19. The defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal this conviction and any sentence, including any fine, at or under the maximum statutory penalty authorized by law. In addition, the defendant agrees to waive any collateral attack to this conviction pursuant to 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

20. Provided that the defendant fulfills the defendant's obligations as set out above, the United States agrees not to bring additional criminal charges against the defendant arising out of the facts forming the basis of the present Complaint.

21. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

22. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose.

VIOLATION OF PLEA AGREEMENT

23. The defendant understands and agrees that if the defendant or the defendant's attorney violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the defendant will thereafter be subject to prosecution for any

criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, and obstruction of justice, and any other crime committed by the defendant during prosecution of this case.


SPECIAL ASSESSMENT

24. At the time of sentencing, the defendant will tender a money order or certified check payable to the order of the United States District Court, District of New Mexico, 333 Lomas Boulevard, NW, Albuquerque, New Mexico 87102, in the amount of \$100.00 per count in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

25. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an Assistant United States Attorney.

DAMON P. MARTINEZ
United States Attorney


for MARISA A. LIZARRAGA
Assistant U.S. Attorney
District of New Mexico
555 Telshor Drive, Suite 300
Las Cruces, New Mexico, 88011
P: 575-522-2304


This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has

threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.



JUAN CARLOS HERNANDEZ
Defendant

I am the attorney for JUAN CARLOS HERNANDEZ. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant sentencing guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



BROCK M. BENJAMIN
Attorney for Defendant